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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BOULEVARD EXCAVATING, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 77-130

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of three \$250 civil penalties for the alleged violation of Sections 9.04, 9.11(a), and 9.15(a) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney and Chris Smith, at a formal hearing in Seattle, Washington on January 16, 1978. David Akana presided.

Appellant was represented by its attorney, Thomas R. Dreiling; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control Hearings

1 Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
5 certified copy of its Regulation I and amendments thereto which are
6 noticed.

7 II

8 Appellant intermittently operates a gravel mining pit located near
9 200th S.E. and S.E. Jones Road in Renton, Washington under a conditional
10 use permit from King County. Access to and from the pit is provided by
11 two "partially paved" private roads which intersect with a blacktopped
12 county road known as Jones Road, which is periodically sealcoated. Under
13 such permit, appellant has the duty to prevent dust emissions from Jones
14 Road.

15 III

16 Complainant's home, at 2005 S.E. Jones Road, is located about 150
17 feet from the intersection of Jones Road and appellant's exit road. On
18 August 18, 1977 at about 11:20 a.m., respondent's inspector visited
19 complainant's residence as a result of her complaint of dust. While the
20 inspector was at the residence, three of appellant's 22-cubic yard
21 capacity trucks appeared on Jones Road, entered the pit via one private
22 road, picked up a load at the pit, exited via the other private road, and
23 departed from the site on Jones Road in front of complainant's property.
24 The only noticeable dust-covered area on Jones Road was the area between
25 appellant's entrance and exit roads. Dust on the exit road and on Jones
26 Road became airborne as the result of the passage of the three trucks.

27 FINAL FINDINGS OF FACT,
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1 Some spillage was observed from the trucks as they left the exit road.
2 The airborne dust caused by the trucks drifted onto complainant's property
3 and landed upon their car, interior and exterior of their home, and upon
4 their fences and pasture. For the foregoing incident, appellant was
5 issued four notices of violation from which followed three \$250 civil
6 penalties and this appeal.

7 IV

8 The month of August was mostly sunny and dry. Respondent's inspector
9 saw no watering trucks, or evidence of their recent use, on the day in
10 question. Appellant testified that he would water down a road, such as
11 in the instant case, when many trucks would travel over a dusty surface.
12 However, appellant had some unspecified trouble with one of its two water
13 trucks that morning and failed to sprinkle the area. Later that day,
14 after appellant had been notified of the inspector's observation, a water
15 truck did wet down the dusty areas, however.

16 V

17 Any Conclusion of Law which should be deemed a Finding of
18 Fact is hereby adopted as such.

19 From these Findings, the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 Section 9.04 of Regulation I provides in part:

23 It shall be unlawful for any person to cause or allow the
24 discharge of particulate matter which becomes deposited upon
the real property of others

25 The section contains certain exceptions which were not shown to be
3 applicable hereto. "Particulate matter" is any solid or liquid material

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 except water, that is airborne. Section 1.07(w). By allowing spillage
2 from the trucks onto the ground, and by causing that dust and dust
3 arising from the road's surface to become airborne and to become deposited
4 on complainant's real property on August 18, 1977, appellant violated
5 Section 9.04.

6 The notice of civil penalty, the controlling document here, adequately
7 describes the violation with reasonable particularity, i.e., the causing
8 or allowing of the discharge of dust from trucks. In any event, appellant
9 could have moved for a more definite statement which it did not do. See
10 WAC 371-08-145.

11 II

12 Section 9.11(a) of Regulation I provides in part that:

13 It shall be unlawful for any person to cause or permit
14 the emission of an air contaminant . . . , including an air
15 contaminant whose emission is not otherwise prohibited by this
16 Regulation, if the air contaminant . . . causes detriment to
the health, safety or welfare of any person, or causes damage
to property

17 "Air contaminant" means "dust" or "other particulate matter." Section
18 1.07(b). "Air pollution" is the presence in the atmosphere of an air
19 contaminant which is "injurious to . . . property, or which unreasonably
20 interferes with enjoyment of life and property." Section 1.07(c).

21 The emission of an air contaminant which unreasonably interferes
22 with a person's enjoyment of life and property violates Section 9.11(a).
23 Boulevard Excavating, Inc. v. Puget Sound Air Pollution Control Agency,
24 PChB No. 77-69 (1977). The dust caused by appellant's trucks on August
25 18, 1977 unreasonably interfered with the enjoyment of life and property
26 of the affected homeowner.

1 III

2 Section 9.15(a) of Regulation I provides:

3 It shall be unlawful for any person to cause or permit
4 particulate matter to be handled, transported or stored
5 without taking reasonable precautions to prevent the
6 particulate matter from becoming airborne.

7 Respondent has shown that appellant had control or responsibility for the
8 road area in question and the materials spilled thereon during transpor-
9 tation, and from which dust became airborne. The burden of presenting
10 evidence is then upon appellant to prove that it had taken "reasonable
11 precautions" to prevent dust from becoming airborne. E.g., Weyerhaeuser
12 Co. v. Puget Sound Air Pollution Control Agency, PCHB 1076 (1977);
13 Boulevard Excavating, Inc. v. Puget Sound Air Pollution Control Agency,
14 supra. Appellant gave testimony that there was some trouble with one of
15 its water trucks. This testimony is not sufficient to show that reason-
16 able precautions were in fact taken, however.

16 IV

17 Each \$250 civil penalty assessed pursuant to Section 3.29 of
18 Regulation I for the violation of Sections 9.04, 9.11(a), and 9.15(a)
19 is reasonable in amount under the circumstances and should be affirmed.

20 V

21 Section 3.29 of Regulation I is not void for having inadequate guide-
22 lines. Compare RCW 70.94.431. See Yakima County Clean Air Authority v.
23 Glascom Builders, Inc., 85 Wn.2d 255 (1975).

24 VI

25 Sections 9.04, 9.11(a), and 9.15(a) of Regulation I are not void for
26 vagueness. State v. Primeau, 70 Wn.2d 109 (1966); State v. Reader's

Digest Ass'n., 81 Wn.2d 259 (1972); Sonitrol Northwest v. Seattle,
84 Wn.2d 588 (1974).

VII

Respondent's actions were not shown to be improper. We have
considered appellant's contentions to the contrary and find them to be
without merit. Each civil civil penalty should be affirmed.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law
is hereby adopted as such.

From these Conclusions the Board enters this

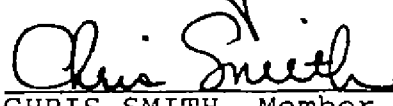
ORDER

Each \$250 civil penalty, Nos. 3457, 3458, and 3459, is affirmed.

DONE this 25th day of January, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Member


CHRIS SMITH, Member